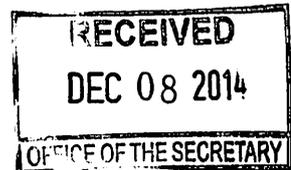


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of : :
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: :
JESSE C. LITVAK : :
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: :
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: :

Administrative Proceeding
File No. 3-16050



DECLARATION OF RACHEL E. HERSHFANG

I, Rachel E. Hershfang, state the following:

1. I am a Senior Trial Attorney with the Division of Enforcement at the United States Securities and Exchange Commission (“SEC” or “Commission”) and have been so employed for the past six and a half years.
2. I make this declaration based upon my personal knowledge and the attached documents, and in support of the SEC’s Reply in Support of Motion for Summary Disposition.
3. The documents attached as exhibits to this declaration are true and accurate copies of documents filed on the public docket in Securities and Exchange Commission v. Jesse C. Litvak, No. 3:13-cv-00132 (JCH) (D. Conn.).
4. Attached hereto as Exhibit A, please find a copy of the Plaintiff Securities and Exchange Commission’s Response to Defendant’s Motion for a Continued Stay [docket no. 55].

5. Attached hereto as Exhibit B, please find a copy of the Defendant Jesse C. Litvak's Memorandum of Law in Support of His Motion for a Continued Stay of this Action [docket no. 54-1].

Executed under the pains and penalties of perjury this 5th day of December 2014 at Boston, Massachusetts.



Rachel E. Hershfang

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2014, I served the Commission's Response to Defendant's Motion for a Continued Stay, on the parties of record via the CM/ECF system and by electronic mail to all parties.

/s/ Rachel E. Hershfang
Rachel E. Hershfang (Mass. Bar No. 631898, CT
phv05878)

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE
COMMISSION

v.

JESSE C. LITVAK

No. 3:13-cv-00132-JCH

November 7, 2014

**DEFENDANT JESSE C. LITVAK'S MEMORANDUM OF LAW IN
SUPPORT OF HIS MOTION FOR A CONTINUED STAY OF THIS ACTION**

Defendant Jesse C. Litvak respectfully submits this memorandum of law in support of his motion for a continued stay of the above-captioned action. Mr. Litvak seeks a continued stay of this action until completion of his pending criminal appellate proceedings in the U.S. Court of Appeals for the Second Circuit (Case No. 14-2902-cr) in order to conserve judicial resources and avoid the potentially wasteful litigation of issues that may be resolved when the appeal concludes in a matter of months. Intervenor the United States of America takes no position on this motion.

BACKGROUND

On January 25, 2013, a federal grand jury in the District of Connecticut indicted the defendant Jesse C. Litvak on eleven counts of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, one count of major fraud against the Troubled Asset Relief Program, in violation of 18 U.S.C. § 1031, and four counts of making a false statement in a matter within the jurisdiction of the U.S. Department of Treasury, in violation of 18 U.S.C. § 1001.¹ On January 28, 2013, the SEC initiated this action against Mr. Litvak in the Federal District Court for the District of Connecticut, alleging that Mr. Litvak violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5

¹ On the eve of trial, the government moved to dismiss Count Seven of the Indictment. The Court granted the government's motion the next day.

thereunder by misleading customers about the price at which Jefferies had purchased RMBS and in some cases, the identity of the seller. The basis for liability in the civil complaint arises out of the same acts, during the same time period, as alleged in the Indictment. On March 6, 2013, Mr. Litvak moved to stay this action and that motion, which was unopposed, was granted by the Court on March 20, 2013.

The criminal trial commenced on February 18, 2014, and on March 7, 2014, the jury returned a verdict of guilty on all counts. On July 23, 2014, the Court sentenced Mr. Litvak to a 24-month term of imprisonment and ordered him to pay a \$1.75 million fine. At the conclusion of his sentencing hearing, Mr. Litvak made an oral motion for bail pending appeal. That motion was denied and on July 25, 2014, the Court entered judgment based on Mr. Litvak's guilty verdict. On August 5, 2014, Mr. Litvak filed a Notice of Appeal in this Court, and that appeal is currently pending before the U.S. Court of Appeals for the Second Circuit. On August 22, 2014, Mr. Litvak filed a motion for bail pending appeal in the U.S. Court of Appeals for the Second Circuit. That motion was granted on October 3, 2014 and Mr. Litvak has been ordered released pending resolution of his appeal.

ARGUMENT

I. The Court Should Exercise its Discretion to Continue to Stay this Action Until the Completion of Mr. Litvak's Criminal Appeal

It is undisputed that courts have discretionary authority to stay a case if the interests of justice so require. *See United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970); *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir. 1986) (citing *SEC v. Dresser Indus.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980) (en banc), cert. denied, 449 U.S. 993 (1980)). There are several factors that courts should consider in determining whether a stay is warranted including: 1) the private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to plaintiff caused by the delay; 2) the private interests of and burden on the defendant; 3) the interests of the court; and 4)

the public interest. *Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1138-39 (S.D.N.Y. 1995). Each of these factors weighs in favor of continuing the stay until the completion of Mr. Litvak's appeal.

First, the plaintiff will not be prejudiced by continuing the stay until the appeal concludes in approximately eight to ten months. In fact, a continued stay will serve to conserve resources by limiting the scope of the issues the parties will need to litigate. While it is the SEC's official policy to oppose the continuance of a stay in a parallel civil action after judgment has been entered in a criminal case, the SEC would not be prejudiced if it is required to wait several additional months to file its motion for summary judgment.² Furthermore, if the SEC's motion for summary judgment is granted by the District Court and the Court of Appeals later reverses Mr. Litvak's conviction, the effort of the Court in considering that motion along with the efforts and expense of the parties litigating it, would be for naught. *See* Oct. 14, 2014 Tr. at 6:10-16. Accordingly, this factor weighs in Mr. Litvak's favor.

Second, the private interests of and burden on Mr. Litvak weigh in favor of continuing the stay, the most compelling of which is Mr. Litvak's interest in preserving his Fifth Amendment rights if the outcome of his appeal results in a new trial rather than a reversal. Furthermore, Mr. Litvak, who may be ultimately responsible for the cost of his defense, and Jefferies, who is responsible for the time being, should be spared the expense of litigating issues—such as whether the SEC is entitled to the relief it would seek in a motion for summary judgment—when the outcome of the appeal will determine these issues for the parties in a matter of months. Even the SEC appreciates the merits of this argument. *See* Oct. 14, 2014 Tr. at 6:3-5.

² During a status conference on October 14, 2014, the SEC indicated that it intended to file a motion for summary judgment on the basis of the criminal conviction. *See* Oct. 14, 2014 Tr. at 6:8-10.

Third, the interests of the Court will be served by granting the continued stay. As a continued stay will serve to limit the scope of the issues the parties will need to litigate, the Court will be spared from considering and ruling on these same issues. If, however, Mr. Litvak's conviction is not reversed and he is granted a new trial under 18 U.S.C. § 3143(b)(1)(B)(ii), a continued stay will promote judicial efficiency and eliminate unnecessary and duplicative litigation of issues in the two cases. For these reasons, this factor also weighs in favor of continuing the stay.

Fourth, a continued stay of this case would not cause serious harm to any public interest. Mr. Litvak has been sentenced to 24 months in prison and ordered to pay a \$1.75 million fine, which he promptly satisfied. Additional relief sought by the SEC in the civil case, if any, will be de minimus.³ Furthermore, given the publicity Mr. Litvak's case received during his trial and the SEC's pending administrative action, which, if successful, will bar him from ever working in the securities industry again, the criminal prosecution has already served to advance the public interests at stake here. Accordingly, this factor weighs in favor of granting Mr. Litvak's motion to continue the stay.

CONCLUSION

For the reasons set forth above, the Court should continue the stay of the instant proceedings in their entirety pending the completion of Mr. Litvak's appeal.

³ The SEC also filed an administrative proceeding, *In the Matter of Jesse C. Litvak*, No. 3-16050, to revoke Mr. Litvak's securities license. That action is currently pending.

Respectfully submitted,

**THE DEFENDANT,
JESSE C. LITVAK**

By: /s/ Ross H. Garber

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Ross H. Garber

Ross H. Garber